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Attorneys for Plaintiff
American Small Business League

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

AMERICAN SMALL BUSINESS LEAGUE

Plaintiff,

v.

UNITED STATES DEPARTMENT OF THE
INTERIOR

Defendant.

COMPLAINT FOR INJUNCTIVE
RELIEF

FREEDOM OF INFORMATION ACT
(5 U.S.C. 552 (a)(3)(A))

E-filing

COMPLAINT FOR INJUNCTIVE RELIEF

1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552, ("FOIA") for injunctive and other appropriate relief to compel the disclosure and release of documents improperly withheld from Plaintiff by the United States Department of the Interior.

JURISDICTION AND VENUE

2. This court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B). This court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

FILED
2011 APR 19 P 3:59
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DMR

THE PARTIES

3. Plaintiff is the American Small Business League ("ASBL"), an organization incorporated in California which has its principal place of business in Sonoma County, California. ASBL is a national organization established to research and focus public attention on emerging small business issues and to otherwise promote the interests of small businesses. ASBL's activities include the review of evolving federal and state government policy and procedures to determine possible impact on small business. .

4. Defendant U.S. Department of the Interior (hereinafter "DOI") is an "agency" within the meaning of 5 U.S.C. § 552 (f).

PLAINTIFF'S FOIA REQUEST AND THE DOI'S RESPONSE

5. On or about June 2, 2010 pursuant to the Freedom of Information Act ("FOIA"), ASBL requested records from DOI consisting of:

The name, title and contact information for any, all each and every contracting officer or official referenced on page 3 in the section titled "Data entry mistakes" that was interviewed, quoted spoken with in compiling report number MOI-0003-2008, titled "Interior Misstated Achievement of Small Business Goals by Including Fortune 500 Companies", which was released in July 2008.

A true and correct copy of the request is attached hereto as Exhibit A.

6. On June 9, 2010 DOI acknowledged ASBL's FOIA request. However, there was no substantive response received from DOI in the required by law.

7. On or about September 10 2010 DOI responded by providing copies of documents partially responsive to ASBL's request. However, the requested documents were incomplete due to heavy redaction. The names, title and contact information for the contracting officer's and officials named in the report -who are all government employees- which was the specific information requested in ASBL's FOIA request, had been redacted. The basis stated by DOI in refusing to provide information requested in ASBL's FOIA request was the FOIA exemption 6 (5 U.S.C. 552(b)(6) , which permits the non-disclosure of "personnel and medical

1 files and similar files the disclosure of which would constitute a clearly unwarranted invasion of
 2 personal privacy". A true and correct copy of the DOI's written response is attached hereto as
 3 Exhibit B.

4 8. On September 13, 2010, , 2010, ASBL appealed DOI's redaction of the identity
 5 and contact information of the government employees interviewed in the report on the grounds
 6 that such information not constitute an invasion of privacy or otherwise fall under the purview of
 7 Exemption 6 to the Freedom of Information Act. A true and correct copy of ASBL's appeal is
 8 attached hereto as Exhibit C.

9 9. On March 5, DOI acknowledged receipt of ASBL's appeal but has provided no
 10 further response within the twenty working days permitted by 5 U.S.C. § 552(a)(6)(A)(ii). A
 11 true and correct copy of DOI's acknowledgment of the appeal is attached hereto as Exhibit D.

12 **CAUSE OF ACTION**

13 **Violation of the Freedom of Information Act**

14 **for Wrongful Withholding of Agency Records**

15 10. The defendant has wrongfully withheld documents requested by ASBL.

16 11. ASBL has exhausted the administrative remedies with respect to the defendant's
 17 wrongful withholding of the requested documents.

18 12. Plaintiff is entitled to injunctive relief and an order from this Court compelling an
 19 immediate release and disclosure of the requested documents in their entirety and without
 20 redaction.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, ASBL prays that this Court:

23 A. Issue an order compelling the defendant to disclose all responsive documents in
 24 their entirety;

25 B. Provide for expeditious proceedings in this action;

26 C. Award ASBL its costs and reasonable attorneys' fees incurred in this action;

27 and


28 D. Grant such other relief as the Court may deem just and proper.

GUTIERREZ & ASSOCIATES

244 CALIFORNIA STREET, SUITE 300
SAN FRANCISCO, CALIFORNIA 94111

Dated: April 19, 2010

GUTIERREZ & ASSOCIATES

By: 
ROBERT E. BELSHAW
Attorneys for Plaintiff

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Kevin Baron

From: Kevin Baron
Sent: Wednesday, June 02, 2010 3:58 PM
To: 'FOIA@doioig.gov'
Subject: Freedom of Information Act Request
June 2, 2010

U.S. Department of the Interior
Office of Inspector General
Attn: Sandra Evans, FOIA Officer
1849 C Street, N.W.
MS-4428-MIB
Washington, D.C. 20240

Dear FOIA Officer:

This is a request under the Freedom of Information Act. I request that a copy of documents containing the following information be provided to me:

- The name, title and contact information for any, all, each and every contracting officer or official referenced on page 3 in the section titled "Data entry mistakes," that was interviewed, quoted or spoken with in compiling Report No. W-EV-MOI-0003-2008, titled "Interior Misstated Achievement of Small Business Goals by Including Fortune 500 Companies," which was released in July 2008.

In order to help to determine my status for purposes of determining the applicability of any fees, you should know that I am the Director of Government Affairs for a small business advocacy group and am seeking information for use in our group's research and not for commercial use.

The American Small Business League is willing to pay fees for this request up to a maximum of \$200.00. If you estimate that the fees will exceed this limit, please inform me first.

I have included a telephone number at which I can be contacted during the hours of 8 a.m. to 5 p.m. Pacific, if necessary to discuss any aspect of my request.

Thank you for your consideration of this request.

Sincerely,
Kevin Baron

Kevin Baron, Director of Government Affairs
American Small Business League
3910 Cypress Dr.
Petaluma CA, 94954
(707) 789-9575

6/2/2010

A

**OFFICE OF
INSPECTOR GENERAL**

U.S. DEPARTMENT OF THE INTERIOR

VIA EMAIL**SEP 10 2010**

Mr. Kevin Baron
American Small Business League
3910 Cypress Drive
Petaluma, CA 94954

Re: 10-FOI-00051

Dear Mr. Baron:

This is in response to your letter dated June 02, 2010, which was received by the Office of Inspector General (OIG) on June 03, 2010, in which you ask for information under the Freedom of Information Act (FOIA), 5 U.S.C. § 552. You ask for the name, title and contact information for any, all, each and every contracting officer or official referenced on page 3 in the section titled "Data entry mistakes," that was interviewed, quoted or spoken with in compiling Report No. W-EV-MOI-0003-2008, titled "Interior Misstated Achievement of Small Business Goals by Including Fortune 500 Companies," which was released in July 2008.

A search was conducted of the AutoAudit database maintained by OIG. The AutoAudit database contains the workpapers of the auditors and the documents collected by the auditors. We identified audit workpapers D.06.01 (CO Responses for Xerox, John Deere, ASAP – 4 pages) and D.06.01.A (CO Responses for GTSI, Word Wide Technology, and Waste Management – 3 pages) as being responsive to your request. All seven pages contain some information that is being withheld.

Deletions have been made of information that is exempt from release under the provisions of 5 U.S.C. § (b)(6). This section exempts from disclosure items that pertain to personnel and other similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Exemption (b)(6) was used to redact the contract number, names telephone numbers of the employees interviewed because the release of this information could subject them to embarrassment and/or harassment due to the findings of the OIG evaluation. The OIG evaluation concluded that the two main reasons the companies were listed as small in FPDS-NG is either "(1) because the contracting officer made a mistake when selecting the CO Size Determination or (2) the order is under a GSA or other original contract that has the CO Size Determination incorrect."

If you disagree with this response, you may appeal the decision by writing to the FOIA Appeals Officer, U.S. Department of the Interior, 1849 C Street, N.W., MS-6556, Washington, D.C. 20240, no later than 30 workdays from the date of the final response. The FOIA Appeal

Officer's facsimile number is (202) 208-6677. Your appeal should be filed in accordance with the regulations set out in 43 C.F.R. §§ 2.28-2.32, a copy of which is enclosed.

Please contact me at (703) 487-5436, if you have any questions concerning this response.

Sincerely,



for Sandra Evans
OIG FOIA Officer

Enclosures

Prepared by: Bryan Brazil 04/07/2008

Assignment Number: W-EV-MOI-0003-2008
Assignment: Evaluation of DOI Socioeconomic Programs in Conjunction with the SBA IG

Section: D.06.01 Subsection:
Program Name: Contracting
Subject: CO Responses for Xerox, John Deere. ASAP

Origination Doclink:

Purpose:
To determine why large businesses like Xerox and John Deere were coded as small businesses.

Scope:
FY 2006-07

Source:
Contracting officers, see below

Conclusion:

We found errors resulting from the way in which GSA Schedules orders were entered in FPDS-NG. Contracting officers told us that GSA orders should be entered in FPDS-NG as delivery orders that reference the GSA contract, in which case the business size determination data is automatically pre-filled from the GSA contract. In a couple of cases, we found that DOI contracting officers had entered GSA orders in FPDS-NG as purchase orders, thereby bypassing the entry of the GSA contract number. As a result, the contracting officers were able to make their own determinations regarding business size. In one case, GSA had correctly determined that the vendor was a large business, yet the DOI contracting officer was able to record it as an SBA set-aside to a small business because they had entered it in FPDS-NG as a purchase order. A contracting officer told us that they had recently received training regarding the proper entry of GSA orders as delivery orders, rather than purchase orders. (see last 2 interviews below)

all corrected errors in FPDS that we brought to their attention. (see interviews below)

Details:

Xerox

██████████ NBC Acquisition Services Directorate in Washington DC ██████████ Regarding contract ██████████, awarded to Xerox in FY 2006. ██████████ said that it is a GSA order that was entered into FPDS by an intern using her user id. ██████████ said she uses CCR to verify a business's size and that she does not investigate further. In this case, because it was a GSA order, ██████████ did not determine business size.

██████████ NBC ASD OST Support in Denver CO ██████████. Regarding contract ██████████ awarded to Xerox in FY 2004 and modified in 2007, ██████████ said it was a data entry error that got missed during the final review of the contract. ██████████ corrected the business size for the 2004 contract and FPDS automatically corrected the size information for the modifications. ██████████ stated that she relies exclusively on CCR to determine business size and believes it is the

most reliable source of information.

BLM Alaska State Office in Anchorage AK. Regarding contract awarded to Xerox in FY 2006, [REDACTED] said that CCR identified Xerox as a small business. (Auditor note: CCR does indeed indicate that Xerox is a small business) When asked if she ever questions the data in CCR, [REDACTED] stated that she constantly finds errors in CCR and that she often goes to the vendors to get the errors corrected. However, she has no authority to force a vendor to update CCR before their registration expires. [REDACTED] stated that vendors are most responsive to correcting CCR when it means the difference in them getting the contract (ie, expired CCR registration). [REDACTED] mentioned that FPDS shows that Xerox has 91,400 employees and over \$18 billion in annual revenue and asked if she ever looks at this information in conjunction with checking CCR. She stated that she is not in the habit of checking the size information that is loaded in FPDS because she had been told that it is unreliable. She stated that in cases where the business size information in CCR seems incorrect, she does not refer it to SBA. [REDACTED] asked what contracting officers are supposed to do when a vendor says they're small, CCR and/or ORCA says they're small, but size information in FPDS indicates they're large and contracting officers have been told that size data in FPDS is not to be relied on.

BIA Southern Plains Region in Anadarko OK. Regarding contracts awarded to Xerox in FY 2006 and 2007, [REDACTED] said that both were data entry mistakes and she would correct them in FPDS. Kathy Daum, Director of the Office of Acquisition for BIA, told me that [REDACTED] is a Procurement Technician who works up the contracts and enters the information in FPDS. The contracts are actually signed by someone else -- a contracting officer with the required warrant authority. [REDACTED] explained that she typically checks CCR to determine whether a vendor is large or small. I also spoke with Jocelyn Littlechief, BIA's supervisory contracting officer in Anadarko OK, and she told me that she would like to make a recommendation regarding FPDS. Specifically, she requested that we recommend that FPDS automatically fill in the size determination based on the information in CCR in order to prevent data entry mistakes. She also thinks FPDS would be more clear if the size determination options were large business/small business, not small business/other than small business. Ms. Littlechief explained that because BIA's Internet access is extremely limited (there is only one Internet connected computer in Anadarko), many of the contracting officers have to take work home to enter in FPDS. In Ms. Littlechief's opinion, BIA contracting officers will continue to make data entry mistakes as long as they have to do the data entry at home, sometimes for 20-30 contracts at a time.

FWS Big Island NWR in Hawaii. Regarding contract awarded to Xerox in FY 2007, [REDACTED] said that she thought it was an example of data input error. She stated that she usually looks at CCR, but most of their contracting is with local vendors and she knows whether they are large or small businesses. [REDACTED] asked me if Xerox was also "on the mainland", apparently unaware that Xerox is a very large company. She said she sometimes finds errors in CCR and asks vendors to correct their information. She said that some will update CCR if they want to get paid, while others fight it. She stated that businesses often have a lot of problems registering in Dunn & Bradstreet, CCR, ORCA, etc, and they get frustrated and angry.

FWS Contracting & General Services in Atlanta GA. Regarding contract awarded to Xerox in FY 2007, [REDACTED] stated that based on the sole source justification in the file, it was supposed to be a large business. She said that she would correct the contract in FPDS to reflect Xerox's large business status. She said she uses CCR to verify business size and she hasn't found any CCR registrations to be incorrect. She said that vendors typically won't update CCR except annually.

FWS ES in Panama City FL. Regarding contract [REDACTED], [REDACTED] said that the purchase order in the file stated "other than small." Despite having a difficult time remembering her FPDS password, while we were on the phone she corrected the contract in FPDS to reflect Xerox's status as a large business. She said that she is located in a small office and doesn't process too many contracts. In determining business size, she said that she goes by CCR and prints the CCR report for the contract file. She said that she sometimes looks at the number of employees or amount of revenue reported in the tools section of CCR, but normally doesn't question the reliability of the data. [REDACTED] stated that even if she did question the data, she wouldn't know how to approach a vendor to correct it. She made a comment that a lot of vendors don't like having their private information out there. She stated that contracting officers have only been required to check ORCA starting this fiscal year (October 2007). However, she said that she hasn't prepared any contracts yet this year and hasn't had to access the system.

ASAP Software

██████████ GSA Contracting Officer ██████████. According to GSA's website, ASAP's GSA contract ██████████ is scheduled to expire on 4/15/08. When asked what will happen when it expires, ██████████ explained that GSA plans to extend the contract to 2011. She said that when it is extended, ASAP's business status will be changed to that of a large business. She couldn't say exactly when the extension would be completed, only that when it is negotiated and the extension is entered into the system, ASAP will no longer be identified as a small business. ██████████ stated that ASAP's GSA contract was originally awarded in 1996.

John Deere

██████████ FWS Noxubee NWR in Brooksville MS ██████████. Regarding contract ██████████ awarded to John Deere in FY 2007, ██████████ stated that John Deere was not small in CCR, it was incorrectly recorded as a small business due to data input error, and she corrected the contract in FPDS to reflect John Deere's status as a large business.

██████████ NPS Purchasing Agent in Santa Fe NM ██████████. Regarding contract ██████████ awarded to John Deere in FY 2007, ██████████ stated that it was incorrectly recorded as a small business due to data input error, and she corrected the contract in FPDS to reflect John Deere's status as a large business.

██████████ FWS Arrowwood NWR in Pingree ND ██████████. Regarding contract ██████████ awarded to John Deere in FY 2007, ██████████ said that it must have been a data entry mistake because the CCR says that John Deere is a large business. She stated that nothing in the contract file says that John Deere is a small business. When asked about the fact that this contract was a small business set-aside, ██████████ confirmed that, according to the contract file, it does appear to be a set-aside. However, she could not explain how a small business set-aside procurement could be awarded to a large business like John Deere.

██████████ FWS BUDS, Contracting & General Services in Portland OR ██████████. We originally requested to speak with ██████████, the former BUDS in Portland, regarding two contracts she awarded to John Deere in FY 2006. ██████████. However, FWS ALO ██████████ informed us that ██████████ was no longer the BUDS and we should contact ██████████. According to ██████████ contracting officers often "click through mindlessly" when entering contracts in FPDS. He said that in this particular case, ██████████ had placed two orders against a GSA contract, but failed to reference the GSA contract when entering the information in FPDS. The GSA contract correctly identified John Deere as a large business, but because ██████████ didn't reference the GSA contract, she was able to change the size determination to small business. He said that if contracting officers "did their job, this wouldn't happen." ██████████ stated that as the BUDS for FWS Regions 1 & 8, he has a hard time getting contracting officers to enter their contracts in FPDS, especially in Hawaii, which he says is his "problem child." He explained that for one particular contracting officer, he now enters all of their contracts in FPDS. ██████████ later called back to explain that he had spoken with ██████████ and she told him that she had relied on CCR which said John Deere was a small business. (Auditor note: For one of the DUNS numbers, John Deere is currently identified as a small business in ORCA, CCR, and DSBS. For the other DUNS number, John Deere updated ORCA on 6/8/06, changing their status from a small business to a large business.)

██████████ FWS Office Assistant at the Eastern Shore NWR in VA ██████████. Regarding contract ██████████ awarded to John Deere in FY 2007, ██████████ stated that she had originally placed a purchase order with James River Equipment, a small business. However, she said that after they accepted the order, they gave her John Deere's GSA contract number, along with John Deere's invoice information and DUNS number. She stated that she was confused about the whole situation but probably should have changed the business size in FPDS after the vendor changed. She was unable to explain the relationship between James River Equipment and John Deere. She said she would like to correct FPDS and would email me if she is successful.

██████████ BLM Central CA Support Office in Bakersfield CA ██████████. Regarding contract ██████████ awarded to John Deere in FY 2007, ██████████ stated that it was supposed to be a delivery order off of GSA eBuy; however, it was entered in FPDS as a purchase order without referencing the GSA

contract number. As a result, [REDACTED] was able to mistakenly enter it into FPDS as a small business and an SBA set aside. [REDACTED] stated that the GSA contract correctly identified John Deere as a large business. According to [REDACTED] the contract was not a set aside, but rather it was solicited under full and open competition. She said that she would delete the existing purchase order from FPDS and re-enter it as a delivery order referencing the appropriate GSA contract. She said that when re-entered, the order would not be identified as a set aside and the contracting officer size determination would be "other than small."

[REDACTED] FWS Carolina Sandhills NWR in McBee SC [REDACTED] Regarding contracts [REDACTED] and [REDACTED] awarded to John Deere in FY 2007, [REDACTED] stated that they were actually GSA orders. She said that she uses FPDS templates when entering actions in FPDS. She stated that she didn't realize that the template was set to "small business," but she now has a separate template for John Deere that correctly identifies it as "other than small." When asked why these GSA orders weren't entered into FPDS as delivery orders, [REDACTED] stated that she only recently received training where she was told to enter GSA orders as delivery orders. In the past, she always entered them as purchase orders.

Note from team leader: Contents of this w/p were discussed with Evaluators during and after its creation.
-VP

Methodology:

Submission:	Submitted	Bryan Brazil	07/02/2008 06:30:47 PM
Level 1 Approval:			
Level 2 Approval:	Approved	Vicki Pruner	07/03/2008 12:59:03 PM

Linkage Information

History

Status:	Approved	Request Review:
In Progress Edit:	Bryan Brazil/SAC/OIG/DOI, Leslie Crouse/SAC/OIG/DOI	
Confidentiality:	Standard	

Add Document Readers:

Read Authorization: [Management], [W MGT], [W Reader], Charles Wiebe/SAC/OIG/DOI, Kimberly Elmore/WDC/OIG/DOI, Michael P Colombo/SAC/OIG/DOI, Vicki Pruner/SAC/OIG/DOI, Bryan Brazil/SAC/OIG/DOI, Debra Ferris/SAC/OIG/DOI, Leslie Crouse/SAC/OIG/DOI, Linda Koochoo/SAC/OIG/DOI, Long Tien/SAC/OIG/DOI, Lori Y Vassar/WDC/OIG/DOI, Rebecca Booth/SAC/OIG/DOI, Sandy Marquiss/SAC/OIG/DOI

Current Editor List: [W MGT], Charles Wiebe/SAC/OIG/DOI, Kimberly Elmore/WDC/OIG/DOI, Michael P Colombo/SAC/OIG/DOI, Vicki Pruner/SAC/OIG/DOI, Bryan Brazil/SAC/OIG/DOI, Debra Ferris/SAC/OIG/DOI, Leslie Crouse/SAC/OIG/DOI, Linda Koochoo/SAC/OIG/DOI, Long Tien/SAC/OIG/DOI, Lori Y Vassar/WDC/OIG/DOI, Rebecca Booth/SAC/OIG/DOI, Sandy Marquiss/SAC/OIG/DOI

All redactions are U.S.C. § (b)(6) of the FOIA

Assignment Workpaper

Prepared by: Leslie Crouse 04/07/2008

Assignment Number: W-EV-MOI-0003-2008

Assignment: Evaluation of DOI Socioeconomic Programs in Conjunction with the SBA IG

Section: D.06.01.A.

Subsection:

Program Name: Contracting

Subject: CO Responses for GTSI, World Wide Technology, and Waste Management

Origination Doclink: 

Purpose:

To document the contracting officers responses regarding the size determination for GTSI, World Wide Technology, and Waste Management.

Scope:

FY 2006 - FY 2007

Source:

Contracting Officers (See below)

Conclusion:

The two main reason these companies were listed as small in FPDS-NG is either (1) because the contracting officer made a mistake when selecting the CO Size Determination or (2) the order is under a GSA or other original contract that has the CO size determination incorrect. The yellow highlights indicate when it was the CO's mistake and the pink highlight indicates when it is a GSA error.

DOI contracting officers may also rely on incorrect size determinations made by other agencies. For interagency contracts and contracts for multi-agency use, such as blanket purchase agreements, indefinite delivery/indefinite quantity (IDIQ) contracts, General Services Administration (GSA) Schedule contracts, and government-wide acquisition contracts, the size determination is made by the contracting officer who awarded the initial contract. When that contracting officer incorrectly codes a contract as small business, the error is reflected on all subsequent task orders. FPDS-NG prevents modification of size determinations so the only recourse that DOI contracting officers have is to request that the contracting officer that initiated the original contract make the correction.

Details:

GTSI

I contacted the following contracting officers on the following GTSI actions to find out how they determined the CO size determination was small:

- [REDACTED] with NBC Acquisition Service Center in Washington DC [REDACTED]. I spoke to [REDACTED] regarding two contracts with GTSI [REDACTED] & [REDACTED]. I first asked what was purchased from GTSI and what the principal NAICS code was because this information was not listed in FPDS. She said servers were purchased under NAICS code 33411 which GTSI is considered a small business.
- I spoke to [REDACTED] with USGS in Reston [REDACTED] regarding contract [REDACTED] and how the CO size determination was decided. She informed me that the CO size determination of "S" for small is incorrect because GTSI is a large business. She said she must have made a mistake while entering it into FPDS and she would go ahead and correct so it reflects that GTSI is a large business.
- I spoke to [REDACTED] with FWS in Region 6 [REDACTED] regarding contract [REDACTED]

she said that GTSI was coded incorrectly as a small business and she would fix it in FPDS to show that it is not a small business.

- I spoke to [REDACTED] with NBC Gov Works [REDACTED] regarding contract [REDACTED] which was under GSA contract [REDACTED]. [REDACTED] said that since this was an order off of a GSA contract they can not change the CO size determination field because GSA started the contract and only they can change it.
- I spoke to [REDACTED] with BIA Northwest Region [REDACTED] regarding [REDACTED] under a NBC contract [REDACTED]. [REDACTED] explained that GTSI is not small and it is an error however, since NBC started the contract they can't change that field in FPDS-NG.
- I spoke to [REDACTED] with USGS in Sacramento [REDACTED] regarding [REDACTED]. Nancy said that it an error and should not be in FPDS-NG as small and that she would go ahead and correct it.

World Wide Technology (WWT)

I contacted the following contracting officers on the following WWT actions to find out how they determined the CO size determination was small:

- I spoke to [REDACTED] with USGS in Sacramento [REDACTED] regarding contract [REDACTED] and # [REDACTED]. She said for # [REDACTED] it is an error and should not be coded as small. She said she would correct this in FPDS. She said for [REDACTED] it is the wrong NAICS code and she said they have a quote from the vendor stating that they are a small business so it is unclear. For [REDACTED] it is properly coded as small due to the NAICS code 517310.
- I spoke to [REDACTED] regarding [REDACTED] and [REDACTED] she said both were issued as delivery orders under established contracts, one on NASA's SEWP contract and the other off GSA Federal Supply Schedules. They were both for IT components for SMARTNET systems. She explained that the base contract establishes the business size of the contractor in FPDS-NG, not individual delivery orders. Therefore, if either of these agencies indicated the contractor was a small business, then the subsequent delivery orders would follow that designation.
- I spoke to [REDACTED] with BLM NIFC [REDACTED] regarding contract [REDACTED] under contract [REDACTED]. She replied that since it is under a GSA schedule they can't change the CO size determination.

Waste Management

I contacted the following contracting officers on the following Waste Management Actions to find out how they determined the CO size determination was small:

- I spoke to [REDACTED] regarding contract [REDACTED]. She said that even though Waste Management is listed the local company who does the work is a small business. She explained that Waste Management pays the local company and since the local company is small that is how she decided to mark it a small business. I asked if she had checked Waste Management's CCR and she said she had not. I told her that in CCR Waste Management is not small and that these CO size determinations roll up into the small business goals. She said she had never thought of it like that and decided to fix the CO size determination in FPDS to show that it is not a small business.
- I spoke to [REDACTED] at NPS Harpers Ferry [REDACTED] regarding contract # [REDACTED]. [REDACTED] told me that she had seen Waste Management as small some where. I asked her if it was in CCR and she said no. She said it was in procurement desktop (PD). While on the phone she logged into PD and said now it isn't listed as small. I asked if she had checked CCR and she said no.
- I spoke to [REDACTED] at NPS Northeast Region [REDACTED] regarding contract # [REDACTED]. He said Waste Management is not small and should not be coded as small. He said it was an error and he would correct it in FPDS. I asked if he had checked CCR and he said he had not.

- I spoke to [REDACTED] at NPS Midwest Region [REDACTED] regarding contract [REDACTED]. I asked if she checked CCR and she said she doesn't because she knows who is small and who isn't. She said that Waste Management pays a local company to do the work so she coded it as small based on that logic. After we talked about it she said Waste Management is not small and should not be coded as small. She said it was an error and she would correct it in FPDS.
- I spoke to [REDACTED] at FWS in Hadley, MA [REDACTED] regarding contract [REDACTED] and [REDACTED]. He was surprised to hear they were listed as small in FPDS because he knows they are large. Once he saw the FPDS listing is small he said it must have been an error and would fix it.
- I spoke to [REDACTED] at NPS Southeast Region [REDACTED] regarding contract [REDACTED]. She said she knows they are large and it is an error in FPDS. She said she would go ahead and fix it in FPDS. I asked if she checked CCR and she said she did not.

Note from team leader: Contents of this w/p were discussed with Evaluator during and after its creation.
-VP

Methodology:

Submission:	Submitted	Leslie Crouse	07/02/2008 06:30:55 PM
Level 1 Approval:			
Level 2 Approval:	Approved	Vicki Pruner	07/03/2008 01:00:37 PM

Linkage Information

History

Status:	Approved	Request Review:
In Progress Edit:	Leslie Crouse/SAC/OIG/DOI	
Confidentiality:	Standard	
Add Document Readers:		

Read Authorization: [Management], [W MGT], [W Reader], Charles Wiebe/SAC/OIG/DOI, Kimberly Elmore/WDC/OIG/DOI, Michael P Colombo/SAC/OIG/DOI, Vicki Pruner/SAC/OIG/DOI, Bryan Brazil/SAC/OIG/DOI, Debra Ferris/SAC/OIG/DOI, Leslie Crouse/SAC/OIG/DOI, Linda Koochoo/SAC/OIG/DOI, Long Tien/SAC/OIG/DOI, Lori Y Vassar/WDC/OIG/DOI, Rebecca Booth/SAC/OIG/DOI, Sandy Marquiss/SAC/OIG/DOI

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98% of all U.S. firms have less than 100 employees

September 13, 2010

U.S. Department of the Interior
FOIA Appeals Officer
1849 C Street, N.W., MS-6556
Washington, D.C. 20240

Re: Freedom of Information Act Appeal

Re: OIG FOIA No. 10-FOI-00051

Dear FOIA Officer:

This is an appeal under the Freedom of Information Act. On June 2, 2010, I requested that a copy of documents containing the following information be provided to me:

- The name, title and contact information for any, all, each and every contracting officer or official referenced on page 3 in the section titled "Data entry mistakes," that was interviewed, quoted or spoken with in compiling Report No. W-EV-MOI-0003-2008, titled "Interior Misstated Achievement of Small Business Goals by Including Fortune 500 Companies," which was released in July 2008.

I received an email from Ms. Sandra Evans on September 10, 2010, which contained several attached documents responsive to the request. The letter attached, also from Ms. Sandra Evans, dated September 10, 2010, included here, discusses the other attached documents and offers an explanation for redacting certain information from the copies of the AutoAudit reports provided

I am appealing the decision to redact the documents provided and request that unredacted copies of the documents be provided in full. The release of this information does not warrant an invasion of personal privacy and should not be subject to FOIA exemption (b)(6). The name of the contract officer should not be withheld as the contract officer was performing official duties that comprise their employment with the agency, and the performance of such duties should not be considered private, nor should the audit of such duties be considered private.

American

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Withholding the contract number under FOIA exemption (b)(6) makes little sense, as releasing the contract number does not invade any person's personal privacy. The release of this information furthers the public good by allowing outside watchdog organizations to pursue possible instances of fraudulent activity.

Thank you for your consideration of this appeal.

Sincerely,

A handwritten signature in black ink, appearing to read 'KB', with a long horizontal flourish extending to the right.

Kevin Baron, Director of Government Affairs
American Small Business League

c'



United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240



IN REPLY REFER TO:
FOIA Appeal No. 2010-142

SEP 30 2010

Kevin Baron
American Small Business League
3910 Cypress Drive
Petaluma, CA 94954

Dear Mr. Baron:

This concerns your September 13, 2010, Freedom of Information Act ("FOIA") appeal ("appeal") to the Department of the Interior ("Department"), which was received on September 21, 2010. The Department has assigned your appeal as **Appeal Number 2010-142**. Please cite this number in any future correspondence you send to the Department regarding this appeal.

The FOIA requires an agency to make a determination on an appeal within 20 workdays after the receipt of such appeal. 5 U.S.C. § 552(a)(6)(A)(ii). The Department will make every effort to reach a decision on your appeal within this time limit.

If you have any questions regarding your appeal, you may contact Sarah Clapp at (202) 208-5339.

Sincerely,

Darrell R. Strayhorn
FOIA Appeals Officer
Department of the Interior